



## **Case Summary**

Donald Carter appeals the sentence imposed by the trial court after the revocation of his probation. We affirm.

## **Issue**

Carter raises one issue, which we restate as whether the trial court abused its discretion when it ordered Carter to serve the remainder of his suspended sentence in the Department of Correction (“DOC”).

## **Facts**

On October 19, 2001, the State charged Carter with one count of Class B felony dealing in a scheduled II controlled substance, Class D felony maintaining a common nuisance, and Class D felony possession of an illegal drug lab. On June 5, 2002, Carter pled guilty to the Class B felony charge and the two remaining charges were dismissed. The trial court sentenced Carter to six years in the DOC with four of those six years suspended.

Carter was released from the DOC on September 28, 2002, and placed on supervised probation. On January 8, 2003, the State filed a petition to revoke Carter’s suspended sentence because he was alleged to have committed Class C felony burglary. On January 31, 2003, Carter was charged with Class C felony forgery. On October 27, 2004, Carter admitted to the allegations in the petition to revoke. After two hearings, the trial court revoked Carter’s suspended sentence and ordered him to serve the remainder of his sentence in the DOC. Carter now appeals.

## Analysis

Carter argues that the trial court abused its discretion when it ordered him to serve the remainder of his suspended sentence upon the revocation of his probation. We review a trial court's sentencing decision in a probation revocation proceeding for an abuse of discretion. Jones v. State, 838 N.E.2d 1146, 1148 (Ind. Ct. App. 2005). "A defendant may not collaterally attack a sentence on appeal from a probation revocation." Id. As we have observed on numerous occasions, a defendant is not entitled to serve a sentence in a probation program; rather, such placement is a matter of grace and a conditional liberty that is a favor, not a right. Id. Upon finding that a person violated a condition of probation, the trial court may continue probation, extend the probationary period for not more than one year beyond the original probationary period, or "order execution of all or part of the sentence that was suspended at the time of initial sentencing." Ind. Code § 35-38-2-3(g).

At the February 2, 2007 dispositional hearing, Carter's probation officer testified that drug treatment opportunities had "fallen through" because one center was not taking patients and Carter could not afford the other center. Tr. p. 36. The probation officer recommended that Carter not be incarcerated and that he serve two years of his remaining suspended sentence on electric monitoring and two years not on electric monitoring. The probation officer also noted that Carter had "not received any prior treatment" and that he received four "conduct descriptions" for "tattooing or self-mutilation" while incarcerated. Id. at 36, 37. As a result of the rule violations Carter lost 420 days of earned credit time.

In ordering Carter to serve the remainder of his sentence in the DOC, the trial court stated:

Mr. Carter it is important for you to know nobody in this room wants anything for you other than success, . . . , but what's important to me is to see action, and your action has been just the opposite of someone who wants to make an effort to change their life. You had opportunities in the DOC. I know it's, I'm sure those opportunities are hard to see sometimes, but you spent four (4) years of your life there and all you did was cost yourself more time. With the serious felonies that we have against you, I cannot justify putting you back out on the street again. If you go to DOC, which are [sic] going to, and you make an effort, a significant effort in the first year to have behavior change, and availing yourself to every opportunity there, there may be some opportunities in this Court, but I am going to revoke your previously suspended sentence of four (4) years . . . .

Id. at 49-50. Although the trial court did not adopt the recommendation of the probation officer, it was within the trial court's discretion to order Carter to serve the remainder of his sentence in the DOC. Carter has not established an abuse of that discretion.

### **Conclusion**

The trial court did not abuse its discretion by ordering Carter to serve the remainder of his sentence in the DOC. We affirm.

Affirmed.

KIRSCH, J., and ROBB, J., concur.